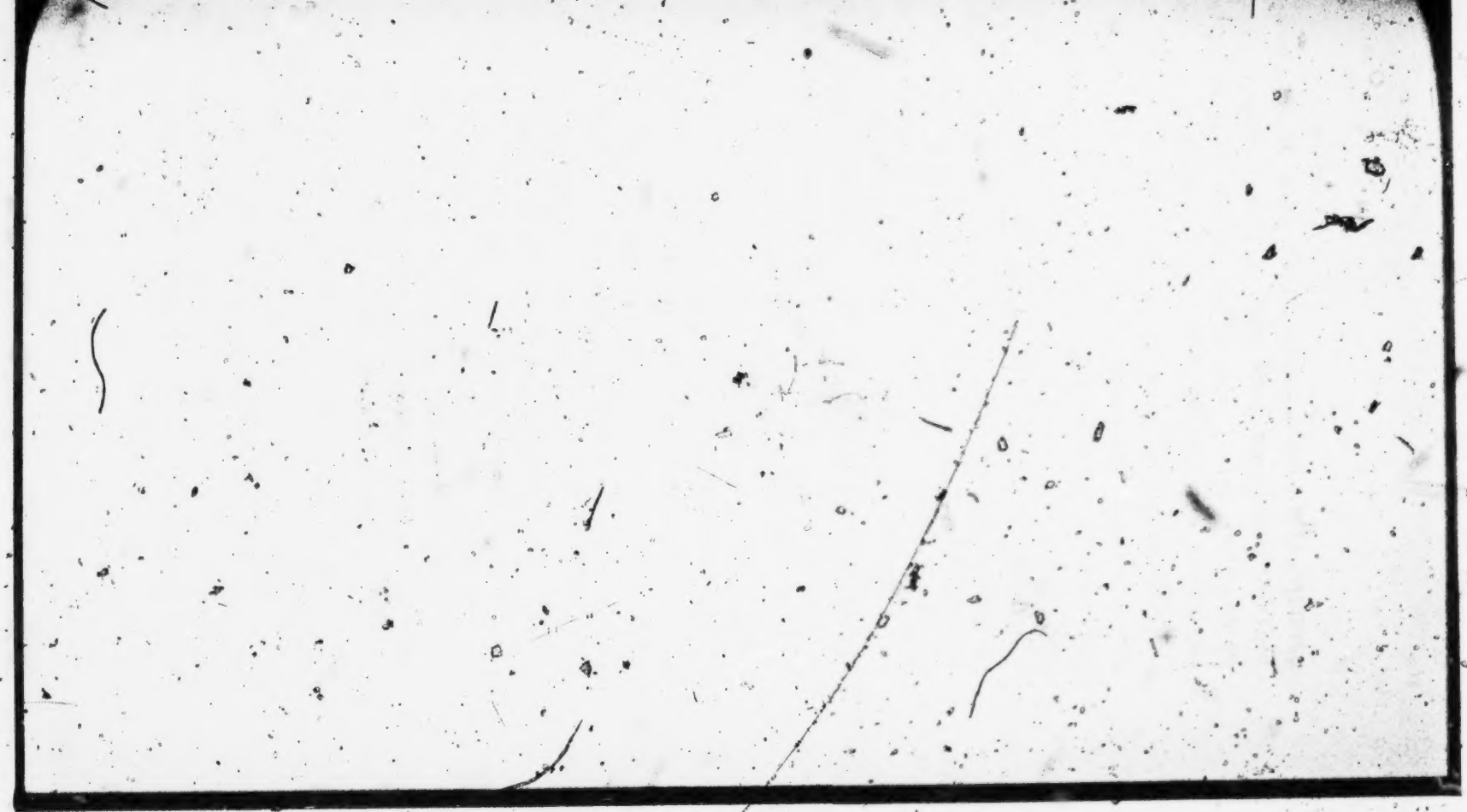

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MAY

CHARLES EL

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1930.

No. [redacted] 69

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, ET AL.,

Appellees.

STATEMENT BY APPELLANTS OF BASIS ON WHICH COURT HAS JURISDICTION TO REVIEW DECREE ON APPEAL.

ALFRED P. THOM,
W. F. DICKINSON,
R. N. VAN DOREN,
R. V. FLETCHER,
HERBERT FITZPATRICK,
GEORGE F. BROWNELL,
C. C. PAULDING,
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BEN C. DEY,
F. BARRON GRIER,
EDWARD S. JOUETT,
W. R. C. COCKE,
L. E. JEFFRIES,
FRANK H. TOWNER,

Solicitors for Appellants.

GIBBONS-BRADEN PRINTING COMPANY, CHICAGO.

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MAY IT PLEASE THE COURT:

In this suit, appellants sought to enjoin, annul, suspend and set aside certain paragraphs of an order of the Interstate Commerce Commission made on July 15, 1930, in a proceeding instituted by the Commission on its own motion and known as its Docket No. 17801, Rules for Car Hire Settlement. The order was directed to all common carriers by rail in the United States.

The suit was heard in the District Court by a three-judge court, convened pursuant to the Act of Congress

of October 22, 1913 (38 Stat. L. 220, Title 28, U. S. C. A., Sec. 47). On January 29, 1931, a final decree was made by the court dismissing the petition of appellants and sustaining the order of the Commission. This appeal is prosecuted from that decree.

(1) The jurisdiction of this court to review said decree on appeal is sustained by the following statutory provisions. The Urgent Deficiencies Act of October 22, 1913 (38 Stat. L. 219-220) confers upon the District Courts of the United States the jurisdiction theretofore vested in the Commerce Court, including jurisdiction over all suits brought to enjoin, suspend, annul, or set aside any order of the Interstate Commerce Commission. The same act provides, with reference to an appeal from the final decree of a District Court in such action, as follows:

> "A final judgment or decree of the District Court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases." (38 Stat. L. 220; Title 28, U. S. C. A., Sec. 47.)

By the Act of February 13, 1925, entitled "An act to amend the Judicial Code and to further define the jurisdiction of the Circuit Courts of Appeals and of the Supreme Court, and for Other Purposes," Section 238 of the Judicial Code was amended to provide:

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:
>
> * * * * * * *
>
> (4) So much of 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913, and for other purposes,' ap-

proved October 22, 1913, as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend or set aside orders of the Interstate Commerce Commission other than for the payment of money." (43 Stat. at L., 938; Judicial Code, Sec. 238; Title 28, U. S. C. A., Sec. 345.)

(2). The decree sought to be reviewed upon this appeal was made and entered on January 29, 1931. (Rec. 1085.)* The petition for appeal herein (Rec., 1090), together with an assignment of errors (Rec., 1093 was presented, and the order allowing the appeal was entered, on January 29, 1931. (Rec., 1098.) The appeal bond was approved and filed on February 10, 1931. (Rec., 1100.) The citation was issued on January 29, 1931, and after due service, was filed on February 7, 1931. (Rec., 1119.) The time for completing the transcript and docketing the case in this court was extended by the lower court from February 28, 1931, to April 1, 1931, by order entered on February 10, 1931 (Rec., 1104), and was further extended to May 15, 1931, by order entered on March 26, 1931. (Rec., 1106.) The cause was docketed in this court on May 7, 1931.

(3) This suit was instituted by appellants for the purpose of enjoining, annulling, suspending and setting aside paragraphs 2, 3 and 5 of an order of the Interstate Commerce Commission made on July 15, 1930, in a proceeding pending before the Commission and known as its Docket No. 17801, Rules for Car Hire Settlement, with which case a number of other proceedings before the Commission had been consolidated. The subject matter of the investigation was the rules in effect between common carriers by rail in the United States, relating to the interchange and use by such carriers of freight cars

* All page references are to the pages of the record filed in this court and which has not yet been printed.

not owned by them and the matter of the accounting and payment for their use of such cars. The petition (Rec., 3) was filed by petitioners on behalf of themselves and all other carriers subject to the Interstate Commerce Act which might have an interest in the premises, since all common carriers by rail in the United States were named as respondents in the proceedings before the Commission and are required to comply with the order.

The order of the Commission (attached to the petition as Appendix B—Rec., 3), requires all common carriers by rail in the United States to establish and observe rules with respect to car hire settlements in conformity with the provisions of the order, and also requires such carriers to cease and desist from applying any rules for car hire settlements in conflict with those prescribed by the order. Paragraphs 2, 3 and 5 of the order require appellants and other carriers similarly situated to permit the use of their freight cars by a designated class of common carriers, either without the payment of any compensation whatsoever for such use or upon the payment of a compensation less than that found by the Commission to be reasonable and proper; require appellants and other carriers similarly situated to pay to carriers owning freight cars, the compensation due such car-owning carriers for the use of their cars by a designated class of common carriers; require appellants and other carriers similarly situated to refund to a designated class of common carriers, under named circumstances, all or practically all the compensation paid by such carriers for the use by them of non-owned freight cars in terminal switching service, and require the payment by appellants and other carriers similarly situated of the expense incurred by a designated class of common carriers in accounting for the use by such

carriers of freight cars not owned by them. For the use of their freight cars and for these payments and assumptions of liability, appellants will receive either no compensation or return whatsoever, or a compensation substantially less than that found by the Commission to be proper. The petition (Rec., 3) alleged that paragraphs 2, 3 and 5 of the Commission's order were void because they operated to confiscate the property of appellants and deprive them of their property without due process of law and without compensation, contrary to the Fifth Amendment to the Federal Constitution; because the classification of railroads created by those paragraphs of the order was arbitrary, unreasonable and illogical, and because the requirements of those paragraphs of the order were not supported by any evidence contained in the record of the proceedings before the Commission.

After a hearing in the District Court, a decree was entered on January 29, 1931 (Rec., 1085), dismissing the petition and sustaining the order in its entirety. The decree of the lower court constituted a final judgment within the meaning of the Act of Congress of October 22, 1913 (38 Stat. at L., 220), and pursuant to the provisions thereof and of the Act of Congress of February 13, 1925 (43 Stat. at L., 938) a direct review of this final judgment and decree may be had in the Supreme Court of the United States. Compliance with the order of the Commission was originally required as of October 1, 1930, but during the pendency of the litigation in the lower court the effective date of the order was extended to January 30, 1931. The Commission having declined to further extend the effective date of the order, appellants complied with its requirements on January 30, 1931, in order to avoid penalties, and it is now in effect.

(4) Cases which sustain the jurisdiction of this court to review said decree are as follows:

Virginian Railway Company v. *United States*, 272 U. S. 658.

United States v. *New York Central Railroad Co.*, 263 U. S. 603.

Dayton-Goose Creek Ry. Co. v. *United States*, 263 U. S. 456.

Stafford v. *Wallace*, 258 U. S. 495, 512.

Louisville & Nashville Railroad Co. v. *United States*, 238 U. S. 1.

United States v. *The Baltimore & Ohio R. R. Co.*, 225 U. S. 306.

Respectfully submitted,

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